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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,695	03/02/2004	David R. Zittel	338.072	8767

23409 7590 03/30/2007  
MICHAEL BEST & FRIEDRICH, LLP  
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MILWAUKEE, WI 53202

EXAMINER
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SIMONE, TIMOTHY F

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/791,695	<b>Applicant(s)</b> ZITTEL ET AL.	
	<b>Examiner</b> Timothy F. Simone	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A. SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10,12-20,23-34 and 36-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-20,23-34 and 36-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/2/04;7/15/04;1/10/05;1/31/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Reissue Applications***

***Oath/Declaration***

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The reissue oath/declaration filed with this application is defective because it fails to *identify* at least one error which is relied upon to support the reissue application. In identifying the error, it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application *up to the time of filing of the oath/declaration* arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

***Claim Rejections - 35 USC § 251***

Claims 1-10, 12-20, 23-34 and 36-47 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. The nature of the defects in the Declaration is set forth in the discussion above in this Office action.

Claims 1-10, 12-20, 23-34 and 36-47 are rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period. In claims 1, 9, 16, 19, 23-27, 31, and 37-47, for example, changing the claim limitation from “fluid”

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to a "liquid heat transfer medium" broadens the scope of these independent claims. In claims 9, 16, 19 and 23-26, changing the claim limitation from food products "received" therein to food products "disposed" therein broadens the scope of these independent claims. Also, in claims 27-34 there is no "food product-receiving chamber" claim limitation. In claims 37-43, there is no "food product inlet" and "food product outlet" claim limitation, etc. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would not have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10, 12-20, 23-34 and 36-47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In the claims, for example, there is no support in the original disclosure for "header" (claim 1, lines 10,14,15; claim 37 lines 9,12; claim 38, lines 9,12; claim 39, lines 9,12), "liquid heat transfer medium" (claim 1, line 4; claim 9, line 6; claim 23, line 6; claim 24, line 7; claim 25, line 6; claim 44, line 6; claim 45, line 5; claim 46, line 6; "disposed therein" (claim 9.

line 4; claim 16, line 4; claim 19, line 4; claim 23, line 4; claim 24, line 5; claim 25, line 4; claim 26, line 4), etc. This is a new matter rejection.

### ***Conclusion***

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,234,066 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

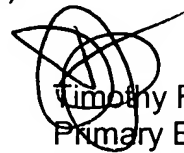
Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy F. Simone whose telephone number is 571-272-1407. The examiner can normally be reached on weekdays between 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 521-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Timothy F. Simone  
Primary Examiner  
Art Unit 1761